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In re Application of: KAMALAKAR, Talasila, et al. :  
U.S. Application No.: 10/510,064 :  
PCT No.: PCT/IB02/01068 : DECISION ON PETITION  
International Filing Date: 04 April 2002 :  
Priority Date: None :  
Attorney's Docket No.: GEN 3.3-015 :  
For: NOVEL PHARMACEUTICAL COMPOSITIONS :  
FOR ANTIHISTAMINIC-DECONGESTANT :  
COMBINATION AND METHOD OF MAKING :  
SUCH COMPOSITIONS :

This decision is issued in response to applicants' "Petition To Withdraw Holding Of Abandonment" filed 04 March 2005, treated herein under 37 CFR 1.181. No petition fee is required.

### **BACKGROUND**

On 04 April 2002, applicants filed international application PCT/IB02/01068 which designated the United States. On 16 October 2003, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for payment of the basic national fee was thirty months from the international filing date, i.e., 04 October 2004.

On 04 October 2004, applicant filed a Form PTO-1390 Transmittal Letter for entry into the national stage in the United States. The Transmittal Letter requested that the USPTO charge Deposit Account No. 50-3220 for required fees, including the basic national fee. However, the form was not signed by a person empowered to authorize charges against this Deposit Account.

On 24 February 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned with respect to the United States for failure to provide the basic national fee within thirty months of the international filing date.

On 04 March 2005, applicant filed the present petition. The petition seeks withdrawal of the holding of abandonment, arguing that the 04 October 2004 submission was sufficient to prevent abandonment.

### DISCUSSION

Pursuant to 37 CFR 1.495(b)(2), an international application becomes abandoned with respect to the United States if the basic national fee is not paid before the expiration of thirty months from the priority date.<sup>1</sup> Applicants here were therefore required to pay the basic national fee prior to midnight on 04 October 2004 (thirty months from the priority date). As noted above, the materials filed by applicant on 04 October 2004 did not include payment of the basic national fee. The Form PTO-1390 Transmittal Letter filed stated that such fees should be charged to Deposit Account No. 50-3220; however, the attorney signing the form is not one of the persons empowered to authorize charges on this Deposit Account.

Petitioner argues that the Form PTO-1390 does not have a space for listing the Deposit Account holder and that this somehow alleviates the need for a proper authorization to charge the Deposit Account. However, it is not the name of the Deposit Account holder that is necessary; rather, it is the signature of an authorized person that is required. The holder of Deposit Account No. 50-3220 has not listed Robert A. Franks as a person empowered to authorize charges against this Deposit Account. Accordingly, Mr. Franks "authorization" to charge the basic national fee to this account (contained on the filed Form PTO-1390) is ineffective. Absent the authorization of an empowered individual, the USPTO is not permitted to charge fees against a Deposit Account. Accordingly, the Form PTO-1390 transmittal Letter filed 04 October 2004 did not include the fee payment required to avoid abandonment. The holding of abandonment is therefore proper.

Petitioner also argues that the USPTO should have contacted applicant if there was a "perceived deficiency in the national phase documents, prior to the determination that the application was abandoned." However, as noted above, the failure to pay the basic national fee before the expiration of the thirty month deadline results in the automatic abandonment of the application as a function of law. Since applicants' 04 October 2004 submission was made on the last day of the thirty month deadline period, no subsequent corrections by applicant could have served to prevent the abandonment (even if the applicable deficiency had been brought to petitioner's attention by the USPTO).

### CONCLUSION

Applicants' petition under 37 CFR 1.181 for withdrawal of the holding of abandonment is **DISMISSED** without prejudice.

If applicants seek reconsideration on the merits, a response must be filed within **TWO (2) MONTHS** of the mail date of this decision. Any such response should be entitled "Renewed

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<sup>1</sup> In cases such as here, where no earlier priority date is claimed, the international filing date is considered the priority date.

Petition Under 37 CFR 1.181" and must include evidence that applicant filed the basic national fee prior to the expiration of thirty months from the priority date.

Applicants might also consider filing a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b).

Please direct further correspondence with respect to this matter to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in black ink, appearing to read 'RMR', is positioned above the typed name of the signatory.

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